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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,571	11/09/2001	Wayne M. VanLandingham	P04853US0	4035

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EXAMINER

HARRIS, ERICA B

ART UNIT PAPER NUMBER

3634

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/036,571

Applicant(s)

VANLANDINGHAM, WAYNE M.

Examiner

Erica B Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 June 2003.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 June 2003 is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 - If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 - * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s). _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

Drawings

1. The drawings were received on June 24, 2003. These drawings are approved.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 601.01(a).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiocca *et al.* (3,752,322) in view of Finola *et al.* (5,601,195). In Figures 1-4, Fiocca illustrates a dishwasher rack 20 comprising a bottom; a front; a back; and opposite sides, each of which are formed from a plurality of rods 24 and 26 that extend across the bottom of the rack and up each side. The rack further comprises first and second horizontal legs 37 extending along the bottom; a plurality of

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stepped tines 38 extending from each of the first and second legs; both of the legs 37 being pivotally mounted on the bottom such that the tines thereon are foldable between upright and lowered positions; and a clip member 45 adapted to engage one of the foldable tines 43 to hold the foldable tines in a position between the upright and lowered positions. The tines 38 on the first leg 37 are independently foldable with respect to the tines 38 on the second leg 37. Clip member 45 further includes a plurality of protrusions 52,54 that are adapted to receive an arm 43 on the one foldable leg 37 to hold the tines 38 in a selected position. The lower ends of the tines on one leg are fixed relative to the tines on the other leg and the upper ends of the tines of the respective legs are spaced progressively farther apart from one another as one or both of the legs are pivoted to fold the tines thereon from the upright position to the lowered position.

Finola *et al.*, in Figure 1, dishwasher rack 1 comprising a bottom; a front; a back; and opposite sides. The rack further comprises first and second horizontal legs 6 extending along the bottom in a common horizontal plane; a plurality of tines 7 extending from each of the first and second legs such that the tines are free from obstruction between the upper and lower ends thereof; both of the legs 6 being pivotally mounted on the bottom such that the tines thereon are foldable between upright and lowered positions; and a clip member 8 adapted to hold the foldable tines in either an upright or a lowered position. The tines 7 on the first leg 6 are independently foldable with respect to the tines 7 on the second leg 6. The lower ends of the tines on one leg are fixed relative to the tines on the other leg and the upper ends of the tines of the respective legs are spaced progressively farther apart from one another as one of the legs is pivoted to fold the tines thereon from the upright position to the lowered position. To one of ordinary skill in the art at the time the invention was made, it would have been obvious to control

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the pivotal movement of an adjacent set of tines of the rack of *Fiocca et al.* with an identical clip member, as taught by *Finola et al.*, such that the tines of each set could be adjusted to mirror each other and to provide tines that are free from obstruction between the upper and lower ends thereof, as also taught by *Finola et al.*, in order to enable items such as plates to be retained between adjacent pairs of tines.

Response to Arguments

5. Applicant's arguments, see pages 8-10, filed June 24, 2003, with respect to the rejection(s) of claim(s) 1-4, 6-11, and 13-20 under Section 102 (b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of *Fiocca et al.* in view of *Finola et al.*

Conclusion

6. Applicant's amendment, i.e. "having lower ends in a common horizontal plane" (claim 1) and "free from obstruction between upper and lower ends of each tine" (claims 8 and 15), necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica B Harris whose telephone number is 703-306-9071. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

Erica B Harris

Erica B. Harris
September 8, 2003

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600